IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL **APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.704 OF 2005
WITH
CRI.REV.APPLICATION NO. 29 OF 2005

Malanbee Mohammed Sharif Khan. .. Applicant
Vs
1.State of Maharashtra & Anr. .. Respondents

Mr.Harshal Mirashi, for the applicant.
Smt S.S.Gokhale, for respondent no.2.

CORAM : S.B.MHASE &
D.B.BHOSALE, JJ.

DATE : APRIL 04, 2005.

ORAL JUDGMENT : (PER S.B.MHASE, J.)

1. Heard the learned counsel for both sides.

2. This is a delay condonation application for condoning delay of 133 days. The order under challenge is dated 22.6.2004 passed by the Family Court on an Interim Application No.179-2002 in Petition No.E-379-2002, thereby, the interim maintenance under section 125 of Cr.P.C has been granted to the respondent-wife and her minor son at the rate of Rs.800/- per month to each of them, thus, totalling to Rs.1600/- per month since 2.12.2002,i.e. from the date of filing of the application. The ground for condonation of delay, as stated in the application is that soon after passing of the said

impugned order, the applicant and her son instructed the Advocate on record to file a criminal revision application challenging the impugned order. However, unfortunately, the advocate on record fell ill and had been confined to bed and could not attend to the court matters. The Advocate on record resumed attending to his duties only from 4.10.2004 and that a precipe for certified copy of the impugned order was made on 22.6.2004 and the same had been furnished to the applicant on 22.8.2004. However, on account of sickness of the advocate on record, the revision application could not be filed and there is a delay of 133 days. This application is opposed by Mr.Gokhale, learned counsel for the respondent-wife, on the ground that the delay has not been properly explained. It is submitted across the bar that the advocate on record has not filed his affidavit supporting the contention that he was ill and no certificate in support of such contention has been produced on record. Secondly, it is also pointed out that an amount of Rs.1600/- per month is an inappropriate amount because it is very difficult for anybody to stay in Bombay in an amount of Rs.800/- per month. The learned counsel for the applicant submitted that his case that the wife being earlier married to somebody else, has not been considered and

straightway the order has been passed.

3. But, we find that the application is vague in so far as the sufficient cause for condonation of delay is concerned. The actual date on which the advocate on record had fallen ill, has not been stated in the application anywhere. What was the illness of the advocate on record is not disclosed. Even the name of the advocate on record is not disclosed. All these particulars with a medical certificate were necessary. However, nothing has been placed on record and, therefore, we find that the delay has not been properly explained and even though we are not very liberal in condoning the delay, this is not a case where we should be liberal in condoning the delay.

4. Apart from this, we have also considered the submissions of the learned counsel appearing for the parties on merits. The grievance made by the learned counsel for the applicant was that the respondent-wife was already married to somebody else and, therefore, there is no liability for maintenance. When we asked the learned counsel what are the particulars of the marriage of the respondent-wife with somebody else prior to the

marriage, the learned counsel was helpless to demonstrate any material on record. Except a vague submission to that effect, nothing has been brought on record to demonstrate at this stage that the respondent-wife is married to somebody else prior to the marriage. Therefore, that submission is also without any merit. Except this, no other point is involved and submitted across the bar. We find there is no substance in the matter and, therefore, the application for condonation of delay is hereby rejected.

5. We keep on record that Mrs Gokhale, learned counsel for the respondent-wife desires to argue a point of maintainability of the revision petition as against the interim order passed by the Family Court under section 125 Cr.P.C. However, in the above referred facts and circumstances of the case and the findings recorded by us, we do not find appropriate to go into this question at this stage. However, it will be considered in an appropriate case and, therefore, it is reserved.

(D.B.BHOSALE, J.) **(S.B.MHASE, J.)**

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